

REMARKS

Applicant has carefully studied the final Office Action of May 14, 2009 and offers the following remarks in response thereto. Applicant first addresses a new section 112(1) issue raised for the first time in the final Office Action. Second, Applicant presents a condensed argument addressing the prior art, taking the amended claim language into account.

Claim Rejections – 35 U.S.C. § 112(1)

Claim 1 presently stands rejected under 35 U.S.C. § 112(1) as allegedly failing to comply with the written description requirement. Specifically, the Examiner objects to the term “locked account” used in the phrase, “providing viewing access for the artist associated with developing the undeveloped creative work of the monetary amount in the locked account.” The Examiner further asserts that the word “locked account” cannot be found in the original specification. Without acquiescence in the grounds of rejection or prejudice to pursue at a later time, by continuation application or otherwise, the claims have been amended to clarify the subject matter being claimed. This rejection is respectfully traversed.

Initially, Applicant observes that the term “locked account” had existed in claim 1 prior to the last amendment. Claim 1 had previously included the limitation, “an accounting routine that aggregates monetary amounts in a locked account for use in development of the specific undeveloped creative

work...." No prior objection was raised to the term "locked account," until issuance of the final Office Action.

It is respectfully submitted that, while the precise term "locked account" is not used as such in the specification, the concept is clearly explained, albeit in slightly different terminology. For example, the specification includes the following description:

[0018] All payments received by the computerized system are preferably placed into a special (e.g., escrow) account specifically designated for the creative work. ...

* * *

[0042] ... Monies collected via the computer system 104 may be placed in, e.g., an escrow account.

[0043] Eventually, as more patrons sponsor a particular work, the accrued monetary amount associated with that work will reach a desired target level. If a predefined target has been associated with a particular work, then when that target is reached the creator, system operator, or administrator may be automatically notified (e.g., via email or local message, as appropriate) by the main computer system 104. Progress reports may also be automatically transmitted to the creator, system operator, or administrator. ... When the target is reached, the works manager 160 may be configured to "close" a

particular work – that is, to no longer accept further patronage for that work.

[0044] Once a work is closed, or optionally prior to that time, the accrued funds become available to the creator for use in connection with the creative work. To access the accrued funds associated with a particular work, the creator (or a system administrator or operator acting on the creator's behalf) may access the main computer system 104 via the administrative transaction handler 130 and select the access funds or refund 144 selection.

* * *

[0076] The funds received from the transactions to sponsor the work, and acquire pre-purchased benefits as a result thereof, may be deposited into, e.g., an escrow account that is specifically designated to be the repository for the funds dedicated to the specific work. In the event that the work does not attract sufficient funds as the result of benefit purchases by patrons, the creator may solicit funds from conventional sources to fund the gap between accrued benefit pre-purchases and the amount needed to produce, develop, and/or market the work, or may offer the patron a benefit associated with another different work, or may refund the collected funds to the patron. When sufficient funds have accrued, they may be disbursed to

the creator, preferably on an as needed basis, in order to support the work and to ensure the development, distribution, promotion, publication, and/or exhibition of the work.

As can be seen from the above excerpts, the specification describes a work-specific “escrow” account that is closed to the artist until a “target is reached” at which point “the accrued funds become available to the creator for use in connection with the creative work.” This type of arrangement may be conveniently abbreviated as a “locked account.”

Nonetheless, if the Examiner does not intend to withdraw the § 112(1) rejection, then Applicant respectfully requests that the amendment herein be entered, in order to place the claims in better condition for appeal, and to eliminate one of the issues from the current application. Specifically, Applicant has proposed to amend claim 1 to read “an accounting routine that aggregates monetary amounts in a locked work-specific controlled escrow account for use in development of the specific undeveloped creative work....” Support for this amendment may be found, among other places, in the cited passages above.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 1 – 17 stand finally rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent publication 2004/0015427 A1 (Camelio) in view of U.S. Patent 7,003,493 (Weichert) and U.S. Patent publication 2002/0198763 (Pittelli). Applicant responds to the final Office Action below, and respectfully

requests reconsideration and withdrawal of the grounds of rejection. Accordingly, this rejection is respectfully traversed.

Claim 1 relates to a computerized system for facilitating the creation and promotion of creative works, comprising (as amended) the following system components:

a user interface routine for visually displaying information about specific undeveloped creative works seeking financial sponsorship, said undeveloped creative works including motion picture works, wherein said information concerning the undeveloped creative works includes a plot description of at least one of the undeveloped motion picture works;

a process handling routine for receiving and processing requests for purchases of benefits relating to a specific undeveloped creative work;

a storage medium for storing user information and associating the patron information to the specific undeveloped creative work selected by the user;

an accounting routine that aggregates monetary amounts in a work-specific controlled escrow account for use in development of the specific undeveloped creative work and releases all or a portion of the aggregated monies when a predefined target

threshold amount is attained to facilitate completion of the specific undeveloped creative work;

an administrative interface routine providing viewing access for the artist associated with developing the undeveloped creative work of the monetary amount in the work-specific controlled escrow account; and

a benefit redemption routine having access to the patron information stored in the storage medium, for facilitating electronic notification of patrons associated the specific undeveloped creative work concerning availability of their purchased benefits, or upon the condition that the predefined target threshold amount is not attained.

Claim 1 differs from any of the cited items in significant and non-obvious ways. First, it should be noted that both Camelio and Pittelli are primary (although not exclusively) directed towards musical artists, and the systems they envision are thus geared primarily towards sponsoring musicians. Claim 1 broadly relates to a variety of undeveloped creative works "including motion picture works," and includes a user interface providing to users "information concerning the undeveloped creative works includes a plot description of at least one of the undeveloped motion picture works." The types of features made available by the claimed invention are not present in the more limited systems of Camelio and Pittelli.

The Office Action further notes that Camelio fails to disclose “facilitating electronic notification of patrons associated with a particular undeveloped creative work concerning availability of their purchased benefits, or upon the condition that the predefined target threshold amount is not attained.” (Office Action at p. 4) For this subject matter, the Office Action refers to Pittelli, and specifically paragraphs [0030] and [0034] thereof, and states that Pittelli teaches the predefined target threshold amount not being attained, and that notifying patrons of such would have been obvious. However, Pittelli’s system is significantly different from claim 1 in this respect. Fundamentally, Pittelli’s system is geared to providing financial backing for particular artists, not specific undeveloped creative works.¹ Accordingly, in Pittelli, the “milestone” level relates to a particular arbitrary amount of sponsorship for a given artist, to be used “in any manner he or she sees fit” (para. [0030]), and not to a specific undeveloped creative work. Therefore, Pittelli does not render obvious the feature of notifying patrons whether the predefined target threshold amount for developing an undeveloped creative work has been attained.

Even more significantly, as acknowledged by the Office Action, Camelio fails to disclose a locked account (i.e., a “work-specific controlled escrow

¹ That is why in Pittelli, general funds are made available to the musician artist when a certain number of “fans” is reached, giving the musician the ability to use the funds at that point in an unrestricted way – that is, “in any manner he or she sees fit.” See Pittelli at para. [0030] (“[A]fter a predefined time, and if the artist meets a predefined set of milestones, the artist can withdraw the fund and use it in any manner he or she sees fit.”). There is no obligation on the part of the musician to utilize the funds for a specific undeveloped creative work.

account") in which the aggregated monies are released in whole or part when a predefined target threshold amount for a specific creative work is attained. (See Office Action at p. 5) For this subject matter, the Office Action cites to Weichert et al, which describes a method for transferring funds in an electronic payment system. Specifically, the Office Action cites to col. 13, lines 43-46 of Weichert et al, and asserts that Weichert et al teaches that funds can be held in an account until a predetermined target amount is reached.

However, as an initial matter, Weichert et al is in a completely different field than the claimed invention, and relates to online checking and debt payment. While the Office Action asserts that both Camelio and Weichert et al are directed towards a "fund transfer system" this is not the case. Weichert et al is directed to an online payment system, while Camelio is directed to a system for sponsoring musical and other artists in exchange for entitlements. A person of ordinary skill in the area of entertainment financing for example would not, it is respectfully submitted, look towards prior art relating primarily to online checking and debt payment in connection with Camelio.

Even so, Weichert et al does not render claim 1 obvious. Weichert et al involves a system where an account owner sets up an account to potentially make automated payments for, e.g., paying periodic debt payments of the like. The payee is a third party with no explicit relation to the owner. While Weichert et al may describe a system that allows automated monetary transfers, it does not change at all Camelio's express teaching that sponsorship funds are only to be released "***upon completion of the project*** and upon the

patron receiving the entitlement(s) corresponding to the patronage level” (Camelio at para. [0144]), and thus even a combination of Camelio and Weichert et al would require both completion of the project and provision of the entitlements as preconditions to release of the project funds. Under Camelio’s approach, even if combined with Weichert et al, the artist must have sufficient funds to complete the project prior to having access to any escrowed funds received from patrons. By contrast, the system of claim 1 provides a mechanism for graduated release of collected funds when a “predefined target threshold amount is reached,” thus ensuring enough capital to complete or make meaningful progress on the undeveloped creative work, but not requiring that the artist have access to sufficient funds to complete the entire project.

In addition, the account in Weichert et al is not a “locked account” (or a “work-specific controlled escrow account”) but a general purpose account used for day to day transactions. It does not provide teachings concerning a “locked account” of the nature contemplated by and claimed in claim 1.

Furthermore, claim 1 now includes “an administrative interface routine providing viewing access for the artist associated with developing the undeveloped creative work of the monetary amount in the work-specific controlled escrow account.” This arrangement is radically different than the context of Weichert et al, for example, in that it provides a system whereby the eventual payee (the artist associated with developing the undeveloped creative work) has routine access to the locked account.

For all of the above reasons, individually and collectively, it is respectfully submitted that claim 1 would not have been obvious in view of the cited items.

Claims 2 – 17 depend upon independent claim 1, and thus should be allowable at least for the reason of depending from an allowable base claim.

In addition, further novel and non-obvious differences are believed to exist between the dependent claims and the cited items. As one example, claim 17 recites that the benefit redemption routine “electronically transmits a key number to said patrons, which may be used by said patrons to redeem the purchased benefit online and/or at a point-of-sale location.” While the Office Action notes that this feature is absent from Camelio, the Office Action does not point to any specific prior art in which these teachings can be found in combination with the other recitals of claim 1. Specifically, it is respectfully submitted that none of the cited items suggests the use of a “key number” in exchange for financial sponsorship of an undeveloped creative work, which results in the ability to redeem the purchased benefit online or at a point-of-sale location. Electronic coupons are inapplicable, for among other reasons, as they are generally pertain to a different context.

In sum, it is respectfully submitted that claims 1 – 17 are non-obvious, and hence allowable, over the cited items.

Reservation of Right to Challenge Cited Items

While Applicant has addressed the cited items on the merits, this should not be construed as an admission that they constitute prior art as against the claimed invention. Applicant reserves the right to antedate either of the cited patent publications pursuant to the appropriate rules, laws, and regulations if deemed necessary to do so.

Likewise, Applicant's election to address the cited patent publications on the merits should not be construed as an admission they provide an enabling disclosure. Applicant reserves the right to challenge the sufficiency of the cited items at a later point in time, including in any post-issuance proceeding or suit, if appropriate.

Request for Allowance

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any unresolved issue remains, the Examiner is invited to contact the undersigned by telephone to discuss those issues so that the Notice of Allowance can be mailed at the earliest possible date.

It is believed that the instant application is in condition for final allowance, and, accordingly, issuance of a notice of allowance is earnestly solicited.

Respectfully Submitted,

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